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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VIASAT, INC., a Delaware Corporation,
Plaintiff and Counter-Defendant,
v.
ACACIA COMMUNICATIONS, INC., a
Delaware corporation,
Defendant and Counter-Claimant.

Case No.: 3:16-cv-00463-BEN-JMA

**ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO
FILE UNDER SEAL**

[Doc. Nos. 73, 81, 84, 87, 90, 92, 96,
101, 104, 107, 117, 123, 133, 136, 139,
142, 146, 149, 154, 164]

Before the Court is Plaintiff ViaSat, Inc. (“ViaSat”) and Defendant Acacia Communications, Inc.’s (“Acacia”) numerous Motions to Seal. Specifically, there are twenty Motions seeking to seal 8,774 pages of the public record. The Court addresses all of the Motions to Seal in this Order.

I. The Right of Access to Judicial Records

In *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), the Supreme Court recognized that the public has “a general right to inspect and copy public records and documents, including judicial records and documents.” *Id.* at 597. The main reason for this general right is to accommodate “the citizen’s desire to keep a watchful eye on the workings of . . . government.” *Id.* at 598. However, the Supreme Court also stated, “the right to inspect and copy judicial records is not absolute.” *Id.* at 589. “Every court

1 has supervisory power over its own records and files, and access has been denied where
2 court files might have become a vehicle for improper purposes,” such as “to gratify
3 private spite or promote public scandal,” or to serve as a source of “business information
4 that might harm a litigant’s competitive standing.” *Id.* (internal citations omitted).

5 Except for certain documents “traditionally kept secret,” federal courts begin a
6 sealing analysis with “a strong presumption in favor of access to court records.” *Foltz v.*
7 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to
8 seal a judicial record then bears the burden of overcoming this strong presumption by
9 meeting the “compelling reasons” standard. *Id.*; *Kamakana v. City & Cnty. of Honolulu*,
10 447 F.3d 1172, 1179 (9th Cir. 2006) (applying compelling reasons standard to dispositive
11 motions); *DISH Network, L.L.C. v. Sonicview USA, Inc.*, No. 09-cv-1553-L, 2009 WL
12 2579052, at *1 (S.D. Cal. Aug. 20, 2009) (treating motion for preliminary injunction as
13 dispositive for sealing analysis because the motion directly addresses the merits and seeks
14 injunctive relief before trial). That is, the party must “articulate [] compelling reasons
15 supported by specific factual findings,” *Foltz*, 331 F.3d at 1135, that outweigh the general
16 history of access and the public policies favoring disclosure, such as the “public interest
17 in understanding the judicial process,” *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th
18 Cir. 1995).

19 “The mere fact that the production of records may lead to a litigant’s
20 embarrassment, incrimination, or exposure to further litigation will not, without more,
21 compel the court to seal its records.” *Kamakana*, 447 F.3d at 1179. A party must satisfy
22 the compelling reasons standard even if the motion, or its attachments, was previously
23 filed under seal or protective order. *Foltz*, 331 F.3d at 1136 (“[T]he presumption of
24 access is not rebutted where . . . documents subject to a protective order are filed under
25 seal as attachments to a dispositive motion.”). Moreover “[s]imply mentioning a general
26 category of privilege, without further elaboration or any specific linkage with the
27 documents, does not satisfy the burden.” *Kamakana*, 447 F.3d at 1184. A party’s failure
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1 to meet the burden of articulating specific facts showing a “compelling reason” means
2 that the “default posture of public access prevails.” *Id.* at 1182.

3 In turn, the court must “conscientiously balance [] the competing interests” of the
4 public and the party who seeks to keep certain judicial records secret. *Foltz*, 331 F.3d at
5 1135. After considering these interests, if the court decides to seal certain judicial
6 records, it must “base its decision on a compelling reason and articulate the factual basis
7 for its ruling, without relying on hypothesis or conjecture.” *Hagestad*, 49 F.3d at 1434
8 (citing *Valley Broadcasting Co. v. U.S. Dist. Ct.*, 798 F.2d 1289, 1295 (9th Cir.1986)).

9 In ruling on motions to seal, this Court has recognized that “compelling reasons
10 sufficient to outweigh the public’s interest in disclosure and justify sealing court records
11 exist when such court files might . . . become a vehicle for improper purposes, such as the
12 use of records to . . . release trade secrets.” *Kamakana*, 447 F.3d at 1179. A “trade secret
13 may consist of any formula, pattern, device or compilation of information which is used
14 in one’s business, and which gives him an opportunity to obtain an advantage over
15 competitors who do not know or use it.” Restatement of Torts § 757 cmt. b.

16 Similarly, other “sources of business information that might harm a litigant’s
17 competitive standing” may also constitute a compelling reason to seal, *see Nixon*, 435
18 U.S. at 598, as a company’s confidential profit, cost, and pricing information if publicly
19 disclosed could put the company at a competitive disadvantage, *see Apple, Inc. v.*
20 *Samsung Elec. Co.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) (“[I]t seems clear that if
21 Apple’s and Samsung’s suppliers have access to their profit, cost, and margin data, it
22 could give the suppliers an advantage in contract negotiations, which they could use to
23 extract price increases for components.”).

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1 **II. Discussion**

2 **A. Plaintiff's Motions to Seal**

3 ViaSat has filed twelve Motions to Seal. The Motions are unopposed and Plaintiff
4 asserts that all documents sought to be sealed in each Motion have been designated as
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY"
6 pursuant to the Stipulated Protective Order (Doc. No. 29), meaning that disclosure would
7 harm the competitive standing of the parties. The Court will review each motion in turn.

8 1. Motion to File Under Seal, 2/2/18 – (Doc. No. 87.)

9 ***Motion for Summary Judgment***

10 Plaintiff seeks to file under seal portions of its Motion for Summary Judgment
11 ("Motion") on Acacia's Counterclaim for Patent Misappropriation and Exhibits 4 and 5
12 to the Declaration of Erika H. Warren in support of their motion.¹ The Court finds that
13 Plaintiff has narrowly tailored its request to seal to only those portions of the Motion and
14 Exhibits that contain technical information that, if disclosed, would place the designating
15 party at a competitive disadvantage.

16 Therefore, the Court **GRANTS** Plaintiffs Motion to Seal and hereby **ORDERS** the
17 Motion and Exhibits 4-5 to the Declaration of Erika H. Warren in support of the motion
18 be filed under seal.²

19 2. Motion to File Under Seal, 2/2/18 – (Doc. No. 92.)

20 ***Motion to Exclude Expert Testimony***

21 Plaintiff seeks to file under seal portions of its Motion to Exclude Expert
22 Testimony ("Motion"), Exhibits 2-8 and 10-17 to the Declaration of Patrick M. Shields,
23 and the Declaration of Dr. Russell Fuerst in support of their motion.³ The Court finds
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26 ¹ Plaintiff simultaneously filed a redacted version of the Motion for Summary Judgment
with the motion to seal. (Doc. No. 89.)

27 ² *See* Doc. Nos. 88; 88-1 to 88-2.

28 ³ Plaintiff simultaneously filed a redacted version of the Motion to Exclude Expert
Testimony with the motion to seal. (Doc. No. 95.)

1 that Plaintiff has narrowly tailored its request to seal to only those portions of the Motion,
 2 Declarations, and Exhibits that contain business and technical information that, if
 3 disclosed, would place the designating party at a competitive disadvantage.

4 Therefore, the Court **GRANTS** Plaintiffs Motion to Seal and hereby **ORDERS** the
 5 Motion, Exhibits 2-8, 10-17 to the Declaration of Patrick M. Shields, and the Declaration
 6 of Dr. Russell Fuerst be filed under seal.⁴

7 3. Motion to File Under Seal, 2/2/18 – (Doc. No. 96.)

8 ***Motion for Partial Summary Judgment***

9 Plaintiff seeks to file under seal portions of its Motion for Partial Summary
 10 Judgment (“Motion”) and Exhibits 1-18, 23-59 to the Declaration of Kenneth M.
 11 Fitzgerald in support of their motion.⁵ The Court finds that Plaintiff has narrowly
 12 tailored its request to seal the Motion and Exhibits 1-18, 23, and 27-59 to only those
 13 portions that contain business and technical information that, if disclosed, would place
 14 the designating party at a competitive disadvantage.

15 However, after reviewing Exhibits 24⁶ and 25⁷, the Court is not persuaded the
 16 information warrants sealing both reports entirely under the compelling reasons standard.
 17 Namely, Plaintiff does not provide a “particularized showing” that “specific prejudice or
 18 harm will result” if excerpts from the reports are publicly disclosed. *See Foltz*, 331 F.3d
 19 at 1130. Plaintiff asserts the reports contain sensitive information about ViaSat’s trade
 20 secrets, Acacia’s accused products and other business and technical information.
 21 Nevertheless, Plaintiff’s explanation for sealing the reports is generalized in nature and
 22 does not account for why multiple pages of an academic, professional and presumably
 23 historical product or service background should be redacted. Requests to seal must be
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25 ⁴ *See* Doc. Nos. 94; 94-2 to 94-8; 94-10 to 94-17.

26 ⁵ Plaintiff simultaneously filed a redacted version of the Motion for Partial Summary
 27 Judgment with the motion to seal. (Doc. No. 98.)

28 ⁶ Exhibit 24 is an expert report of *Professor Krishna Narayanan* dated October 27, 2017.

⁷ Exhibit 25 is an expert report of *Dr. Alexander Vardy* dated November 21, 2017.

1 narrowly tailored, Plaintiffs request is not. Portions of each exhibit are sealable, but not
2 the entire reports.

3 Therefore, the Court **GRANTS** in part, and **DENIES** in part Plaintiffs Motion to
4 Seal. The Court hereby **ORDERS** the Motion and Exhibits 1-18, 23, 27-59 to the
5 Declaration of Kenneth M. Fitzgerald in support of the motion filed under seal.⁸ The
6 Court further **DENIES** Plaintiff's request to Seal Exhibits 24 and 25.

7 4. Motion to File Under Seal, 2/6/18 – (Doc. No. 101.)

8 ***Opposition to Acacia's Motion for Partial Summary Judgment***

9 Plaintiff seeks to file under seal portions of its Opposition to Defendant's Motion
10 for Partial Summary Judgment Regarding Damages ("Opposition") and Exhibits 1, 3-34,
11 and 36-44 to the Declaration of Patrick M. Shields in support of their Opposition.⁹ The
12 Court finds that Plaintiff has narrowly tailored its request to seal to only those portions of
13 the Opposition and Exhibits 1, 5-11, 13-14, 16-30, 32-34, 37-39, and 41-44 that contain
14 business and technical information that, if disclosed, would place the designating party at
15 a competitive disadvantage.

16 The Plaintiff has not persuaded the Court the information contained in Exhibits 3-
17 4, 12, 15, 31, 36, and 40 warrant sealing the reports entirely. Exhibit 3 is a copy of the
18 Rebuttal Expert Report of Dr. Ivan Djordjevic; Exhibit 4 is a copy of the Opening Expert
19 Report of Dr. Krishna Narayanan; Exhibit 12 is a copy of the Expert Report of Dr.
20 Alexander Vardy; Exhibit 15 is a copy of the Expert Report of Stephen D. Prowse, Ph.D.,
21 CFA; Exhibit 31 is a copy of the Rebuttal Expert Report regarding Damages of Brent K.
22 Bersin; Exhibit 36 is a copy of the Preliminary Affirmative Expert Report Regarding
23 Damages of Brent K. Bersin. Plaintiffs seek to seal the full reports because they
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27 ⁸ *See* Doc. Nos. 97; 97-1 to 97-18; 97-23; 97-27 to 97-59.

28 ⁹ Plaintiff simultaneously filed a redacted version of the Opposition with the motion to seal. (Doc. No. 103.)

1 allegedly contain sensitive information about ViaSat's trade secrets, Acacia's accused
2 products and other business and technical information.

3 As with its previous Motions to Seal, Plaintiff has failed to make the necessary
4 showing to justify sealing the exhibits entirely. Plaintiff's explanation is generalized and
5 insufficient. No "particularized showing" of "specific prejudice or harm" would result if
6 public disclosure was made. (*Id.*) Finally, Plaintiff fails to explain why multiple pages of
7 an academic, professional and presumably historical product or service background
8 should be redacted. Without more, the request to seal cannot be granted.

9 Exhibit 40 is a copy of Exhibit 563 from the deposition of Christian Rasmussen.
10 The Motion to Seal states Exhibit 40 contains information that Acacia identified as
11 confidential. No additional reason is given to justify sealing the Exhibit. Conclusory or
12 blanket assertions to seal a document are not enough to satisfy the compelling reasons
13 standard. Moreover, because the Court is precluded from hypothesizing or assuming that
14 a compelling reason exists, Plaintiff will not be permitted to redact this information as
15 submitted.

16 Therefore, the Court **GRANTS** in part and **DENIES** in part Plaintiffs Motion to
17 Seal. The Court hereby **ORDERS** the Opposition and Exhibits 1, 5-11, 13-14, 16-30, 32-
18 34, 37-39, and 41-44 to the Declaration in support be filed under seal.¹⁰ The Court
19 further **DENIES** Plaintiff's request to Seal Exhibits 3-4, 12, 15, 31, 36, and 40.

20 5. Motion to File Under Seal, 2/12/18 – (Doc. No. 104.)

21 ***Opposition to Acacia's Motion for Preliminary Injunction***

22 Plaintiff seeks to file under seal portions of its Opposition to Defendant's Motion
23 for Summary Judgment Regarding No Liability ("Opposition") and Exhibits 5-39 to the
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28 ¹⁰ *See* Doc. Nos. 102; 102-1; 102-5 to 102-11; 102-13 to 102-14; 102-16 to 102-30; 102-
32 to 102-34; 102-37 to 102-39; and 102-41 to 102-44.

1 Declaration of Kenneth M. Fitzgerald in support their Opposition.¹¹ The Court finds that
 2 Plaintiff has narrowly tailored its request to seal to only those portions of the Opposition
 3 and Exhibits 5-16 and 21-39 that contain business, financial and technical information
 4 that, if disclosed, would place the designating party at a competitive disadvantage.

5 The Court is not convinced the information contained in Exhibits 17-20 warrants
 6 sealing the reports entirely. Exhibit 17 is a copy of the Expert Report of Professor
 7 Krishna Narayanan; Exhibit 18 is a copy of the Expert Report of Dr. Alexander Vardy;
 8 Exhibit 19 is a copy of the Expert Report of Dr. Marwan Hassoun; Exhibit 20 is a copy of
 9 the Expert Report of Stephen D. Prowse, Ph.D., CFA.

10 Again, Plaintiff has not made the necessary showing to justify sealing the exhibits
 11 entirely. Plaintiff's explanation is generalized with no "particularized showing" of
 12 "specific prejudice or harm." Finally, Plaintiff fails to explain why multiple pages of
 13 non-confidential information should be sealed. Without more, the request to seal cannot
 14 be granted. Portions of each report are sealable, but not each report in its entirety.

15 Therefore, the Court **GRANTS** in part and **DENIES** in part Plaintiffs Motion to
 16 Seal. The Court hereby **ORDERS** the Opposition and Exhibits 5-16 and 21-39 to the
 17 Declaration in support be filed under seal.¹² The Court further **DENIES** Plaintiff's
 18 request to seal Exhibits 17-20.

19 6. Motion to File Under Seal, 2/19/18 – (Doc. No. 123.)

20 *ViaSat's Motion for Summary Judgment*

21 Plaintiff seeks to file under seal its Corrected Memorandum in Support of ViaSat's
 22 Motion for Summary Judgment on Acacia's Counterclaim for Patent Misappropriation
 23 ("Corrected Memorandum 1"); its Corrected Memorandum of Points and Authorities in
 24 Support of ViaSat's Motion to Exclude Expert Testimony ("Corrected Memorandum 2");
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 27 ¹¹ Plaintiff simultaneously filed a redacted version of the Opposition with the motion to
 28 seal. (Doc. No. 106.)

¹² *See* Doc Nos. 105; 105-5 to 105-16; 105-21 to 105-39.

1 and Exhibit F and G to ViaSat's *Ex Parte* Application for Leave to Correct Errors in its
 2 Motions for Summary Judgment and to Exclude Expert Testimony.¹³ The Court has
 3 reviewed the Corrected Memoranda and Exhibits and deems them narrowly tailored to
 4 seal only those portions that contain business, financial and technical information that, if
 5 disclosed, would place the designating party at a competitive disadvantage.

6 Therefore, the Court **GRANTS** Plaintiffs Motion to Seal and hereby **ORDERS**
 7 Corrected Memoranda 1 and 2, and Exhibits F and G filed under seal. Notably, the
 8 information sought to be sealed in this Motion was previously granted in Docket
 9 Numbers 87 and 92.

10 7. Motion to File Under Seal, 2/26/18 – (Doc. Nos. 133.)

11 *Reply in Support of Motion for Partial Summary Judgment*

12 Plaintiff seeks to file under seal portions of its Reply Memorandum of Points and
 13 Authorities in Support of Motion for Partial Summary Judgment ("Reply") and Exhibits
 14 60-63 to the Reply Declaration of Kenneth M. Fitzgerald in support of the Motion.¹⁴ The
 15 Court finds that Plaintiff has narrowly tailored its request to seal to only those portions of
 16 the Reply and Exhibits 60-63 that contain business, financial and technical information
 17 that, if disclosed, would place the designating party at a competitive disadvantage.

18 Therefore, the Court **GRANTS** Plaintiffs Motion to Seal. The Court hereby
 19 **ORDERS** the Reply and Exhibits 60-63 to the Declaration in support be filed under
 20 seal.¹⁵

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25 ¹³ Plaintiff simultaneously filed redacted versions of Corrected Memorandum 1, 2,
 26 Exhibits F, and G with the motion to seal. (Doc. Nos. 124-25.)

27 ¹⁴ Plaintiff simultaneously filed a redacted version of the Reply in Support of Partial
 28 Summary Judgment with the motion to seal. (Doc. No. 135.)

¹⁵ See Doc. Nos. 134; 134-60 to 134-63.

8. Motion to File Under Seal, 2/26/18 – (Doc. No. 136.)

Opposition to Acacia's Motion to Strike

Plaintiff seeks to file under seal portions of its Opposition to Acacia's Motion to Strike and Exclude Certain Opinions of ViaSat's Experts ("Opposition") and Exhibits 1-3 and 5-6 to the Declaration of Matthew S. Warren in Support of their Opposition. The Court finds that Plaintiff has narrowly tailored its request to seal to only those portions of the Opposition and Exhibits 1-3, and 6 that contain business, financial and technical information that, if disclosed, would place the designating party at a competitive disadvantage.

Plaintiff has not swayed the Court that the information contained in Exhibit 5 warrants sealing. The exhibit is a copy of an email exchange between multiple named parties that Acacia claims contain information designated as "HIGHLY CONFIDENTIAL—ATTORNEYS EYES ONLY." The exchange does not appear to include product business, financial, or technical specifications that would justify sealing it. No other justification for sealing the Exhibit is provided. Merely stating that an item is "HIGHLY CONFIDENTIAL—ATTORNEYS EYES ONLY" is insufficient. Without more, the request to seal cannot be granted.

Therefore, the Court **GRANTS** in part and **DENIES** in part Plaintiffs Motion to Seal. The Court hereby **ORDERS** the Opposition and Exhibits 1-3 and 6 to the Declaration in support filed under seal.¹⁶ The Court further **DENIES** Plaintiff's request to seal Exhibit 5.

9. Motion to File Under Seal, 2/26/18 – (Doc. No. 139.)

Reply in Support of ViaSat's Motion to Exclude

Plaintiff seeks to file under seal portions of its Reply Memorandum in Support of ViaSat's Motion to Exclude Expert Testimony ("Reply") and Exhibits 18-23 to the Reply

¹⁶ See Doc. Nos. 137; 137-1 to 137-3; 137-6.

1 Declaration of Patrick M. Shields in Support of their Motion to Exclude Expert
 2 Testimony.¹⁷ The Court finds that Plaintiff has narrowly tailored its request to seal to
 3 only those portions of the Reply and Exhibits that contain business, financial and
 4 technical information that, if disclosed, would place the designating party at a
 5 competitive disadvantage.

6 Therefore, the Court **GRANTS** Plaintiffs Motion to Seal. The Court hereby
 7 **ORDERS** the Reply and Exhibits 18-23 to the Declaration in support filed under seal.¹⁸

8 10. Motion to File Under Seal, 2/26/18 – (Doc. No. 142.)

9 ***Memorandum in Support of Motion for Summary Judgment***

10 Plaintiff seeks to file under seal portions of the Reply Memorandum in Support of
 11 their Motion for Summary Judgment on Acacia's Counterclaim for Patent
 12 Misappropriation ("Reply").¹⁹ The Court finds that Plaintiff has narrowly tailored its
 13 request to seal to only those portions of the Reply that contain business, financial and
 14 technical information that, if disclosed, would place the designating party at a
 15 competitive disadvantage.

16 Therefore, the Court **GRANTS** Plaintiffs Motion to Seal. The Court hereby
 17 **ORDERS** the Reply filed under seal.²⁰

18 11. Motion to File Under Seal, 3/5/18 – (Doc. No. 149.)

19 ***Opposition to Acacia's Motion for Summary Judgment***

20 Plaintiff seeks to file under seal portions of its Opposition to Acacia's Motion for
 21 Summary Judgment Regarding No Liability that ViaSat Lacks Trade Secret Rights
 22 ("Opposition"); Exhibit 1 to the Declaration of Russel Fuerst ("Exh. 1-RF"); Exhibit 1 to
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 25 ¹⁷ Plaintiff simultaneously filed a redacted version of the Reply with the Motion to Seal.
 26 (Doc. No. 141.)

27 ¹⁸ *See* Doc. Nos. 140; 140-18 to 140-23.

28 ¹⁹ Plaintiff simultaneously filed a redacted version of the Reply with the motion to seal.
 (Doc. No. 144.)

²⁰ *See* Doc. Nos. 143.

the Declaration of Chandrasekar Raj (“Exh. 1-CR”); and Exhibits 3-20 to the Declaration of David M. Beckwith.²¹ The Court finds that Plaintiff has narrowly tailored its request to seal to only those portions of the Opposition, Exh. 1-RF, Exh. 1-CR, and Exhibits 3-20 that contain business, financial and technical trade secret information that, if disclosed, would place the designating party at a competitive disadvantage.

Therefore, the Court **GRANTS** Plaintiffs Motion to Seal. The Court hereby **ORDERS** the Opposition, Exh. 1-RF, Exh. 1-CR, and Exhibits 3-20 to the Declaration of David Beckwith in support filed under seal.²²

12. Motion to File Under Seal, 5/7/18 – (Doc. No. 164.)

Memorandum of Contentions of Fact and Law

Plaintiff seeks to file under seal portions of its Memorandum of Contentions of Fact and Law (“Memorandum”) and Exhibit A to the memorandum.²³ The Court finds that Plaintiff has narrowly tailored its request to seal to only those portions of the Memorandum and Exhibit A that contain business, financial and technical information that, if disclosed, would place the designating party at a competitive disadvantage.

Therefore, the Court **GRANTS** the Plaintiffs Motion. The Court hereby **ORDERS** the Memorandum and Exhibit A to the Memorandum filed under seal.²⁴

B. Defendants’ Motions to Seal

Defendant Acacia has filed eight Motions to Seal. The Motions are unopposed and Defendant asserts that all the documents sought to be sealed in each Motion have been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’

²¹ Plaintiff simultaneously filed a redacted version of the Opposition with the motion to seal. (Doc. No. 151.)

²² *See* Doc. Nos. 150; 150-1 to 150-20.

²³ Plaintiff simultaneously filed a redacted version of the Memorandum with the motion to seal. (Doc. No. 166.)

²⁴ *See* Doc. Nos. 165; 165-1.

1 EYES ONLY” pursuant to the Stipulated Protective Order (Doc. No. 29). The Court will
2 review each motion in turn.

3 1. Motion to File Under Seal, 1/17/18 – (Doc. No. 73.)

4 ***Motion for Partial Summary Judgment***

5 Defendant seeks to file under seal portions of its Motion for Partial Summary
6 Judgment Regarding Damages (“Partial MSJ”) and Exhibits 2-3, 5-11 to the Declaration
7 of Stuart V. C. Duncan Smith in support of their Motion.²⁵ The Court finds that
8 Defendant has narrowly tailored its request to seal to only the portions of the Partial MSJ
9 and Exhibits 3, 5-7, 9-11 that contain business, financial and technical information that, if
10 disclosed, would place the designating party at a competitive disadvantage.

11 However, Defendant has not demonstrated a compelling reason to overcome the
12 presumption of public access to judicial records to justify sealing Exhibits 2 and 8.
13 Exhibit 2 is a copy of the Expert Report of Stephen D. Prowse, Ph.D., CFA, and Exhibit
14 8 is a copy of the Rebuttal Expert Report Regarding Damages of Brent K. Bersin. To
15 begin with, Defendant’s explanation is generalized with no “particularized showing” of
16 “specific prejudice or harm” that would arise from disclosure. Moreover, Defendant fails
17 to explain why multiple pages of non-confidential information should be sealed. Without
18 more, a request to seal cannot be granted.

19 Therefore, the Court **GRANTS** in part and **DENIES** in part Defendants Motion to
20 Seal. The Court hereby **ORDERS** the Partial MSJ and Exhibits 3, 5-7, 9-11 to the
21 Declaration in support filed under seal.²⁶ The Court further **DENIES** Defendants request
22 to Seal Exhibits 2 and 8.

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27 ²⁵ Defendant simultaneously filed a redacted version of the Partial MSJ with the motion to
28 seal. (Doc. No. 75.)

²⁶ *See* Doc. Nos. 74; 74-3; 74-5 to 74-7; 74-9 to 74-11.

2. Motion to File Under Seal, 1/26/18 – (Doc. No. 81.)

Motion for Summary Judgment

Defendant seeks to file under seal portions of its Motion for Summary Judgment Regarding No Liability (“Motion”) and Exhibits 2, 5-6, 8, 13-24, 26-30, and 33-41 to the Declaration of Stuart V. C. Duncan Smith in support of their Motion.²⁷ The Court finds Defendant has narrowly tailored its request to seal to only the portions of the Motion and Exhibits 5, 13, 17-23, 27-30, and 33-41 that contain business, financial and technical trade secret information that, if disclosed, would place the designating party at a competitive disadvantage.

The Court is not persuaded the information contained in Exhibits 2, 8, 14, 15, 16, 24, 26 warrant sealing. Exhibit 2 is a copy of the Expert Report of Stephen D. Prowse, Pd.D., CFA; Exhibit 8 is a copy of the Rebuttal Expert Report Regarding Damages of Brent K. Bersin; Exhibit 14 is a copy of the Rebuttal Report of Professor Ivan Djordjevic, Ph.D.; Exhibit 15 is a copy of the Expert Report of Dr. Alexander Vardy; Exhibit 16 is a copy of the Opening Expert Report of Professor Krishna Narayanan, Ph.D.; Exhibit 24 is a copy of the Expert Report of Dr. Richard W. Koralek; and Exhibit 26 is a copy of the Opening Report of Dr. Marwan Hassoun.

Defendant seeks to seal all of the expert reports alleging that each contains sensitive information that ViaSat has designated as “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” as well as information that is Third Party Highly Confidential. This includes documents produced by third parties in the course of litigation, confidential business and financial information regarding product sales, royalty payments, and an assessment on the value of the technology and products at issue in this case. Defendants explanation is insufficient to justify sealing each report in its entirety. Moreover, their explanation is merely a generalized response with no “particularized

²⁷ Defendant simultaneously filed a redacted version of the MSJ with the motion to seal. (Doc. No. 83.)

1 showing” of “specific prejudice or harm.” Lastly, Defendant fails to explain why
 2 multiple pages of non-confidential information should be sealed. Without more, the
 3 request to seal cannot be granted.

4 Therefore, the Court **GRANTS** in part and **DENIES** in part Defendants Motion to
 5 Seal. The Court hereby **ORDERS** the Motion and Exhibits 5, 13, 17-23, 27-30, 33-41 to
 6 the Declaration in support filed under seal.²⁸ The Court further **DENIES** Defendants
 7 request to Seal Exhibits 2, 8, 14-16, 24, and 26.

8 3. Motion to File Under Seal, 2/1/18 – (Doc. No. 84.)

9 ***Motion to Strike and Exclude Certain Opinions***

10 Defendant seeks to file under seal portions of its Motion to Strike and Exclude
 11 Certain Opinions (“Motion”) and Exhibits 2, 14-16, and 42-49 to the Third Declaration of
 12 Stuart V. C. Duncan Smith in Support of their Motion.²⁹ The Court finds that Defendant
 13 has narrowly tailored its request to Seal to only those portions of the Motion and Exhibits
 14 16, and 43-48 that contain business and technical information that, if disclosed would
 15 place the designating party at a competitive disadvantage.

16 The Court is not persuaded the information contained in Exhibits 2, 14, 15, 42 and
 17 49 warrants sealing. Exhibit 2 is a copy of the Expert Report of Stephen D. Prowse,
 18 Ph.D., CFA; Exhibit 14 is a copy of the Rebuttal Report of Professor Ivan Djordjevic,
 19 Ph.D.; Exhibit 15 is a copy of the Expert Report of Dr. Alexander Vardy; Exhibit 42 is a
 20 copy of the Rebuttal Expert Report of Stephen D. Prowse, Ph.D., CFA.

21 Defendant contends sealing the exhibits is necessary because each report contains
 22 sensitive information ViaSat has deemed “HIGHLY CONFIDENTIAL—ATTORNEYS’
 23 EYES ONLY” as well as information that is Third Party Highly Confidential. This
 24 includes confidential technical, business and financial information on product sales,
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 27 ²⁸ See Doc. Nos. 82; 82-5; 82-13; 82-17 to 82-23; 82-27 to 82-30; 82-33 to 82-41.

28 ²⁹ Defendant simultaneously filed a redacted version of the Motion with the motion to seal. (Doc. No. 86.)

royalty payments, assessments on the value of the technology at issue, Acacia's alleged trade secrets, and ViaSat's accused products. However, as discussed *supra*, Defendant's reasoning is generalized with no "particularized showing" of "specific prejudice or harm." Moreover, Defendant fails to explain why multiple pages of non-confidential information should be sealed. Without more, the request to seal cannot be granted.

Exhibit 49 is a copy of an Acacia Presentation entitled "AC400 Project Review." It contains technical descriptions of Acacia's accused products and related technology and business information. Some of the information in the presentation is sealable, such as Acacia's software development status and causes for delays in development and production. But, presumably, such information would be shared with third parties. Moreover, Acacia only makes a blanket assertion the presentation contains information that Acacia has identified as confidential. Such conclusory assertions, unsupported by a declaration or affidavit, fail to satisfy the compelling reasons standard. *See Cohen*, 2016 WL 3036302, at *5.

Therefore, the Court **GRANTS** in part and **DENIES** in part Defendants Motion to Seal. The Court hereby **ORDERS** the Motion and Exhibit 16 and 43-48 to the Declaration in support filed under seal.³⁰ The Court further **DENIES** Defendant's request to Seal Exhibits 2, 14-15, 42, and 49.

4. Motion to File Under Seal, 2/2/18 – (Doc. No. 90.)

Motion for Summary Judgment

Defendant seeks to file under seal portions of its Motion for Summary Judgment ("Motion") in Support of Acacia's Motion for Summary Judgment that ViaSat Lacks Trade Secret Rights and Exhibits 3, 10, 14-16, 21, 26, 50-63, 66, 70-79, 82-86, and 88 to the Fourth Declaration of Stuart V. C. Duncan Smith in Support of their Motion.³¹ The

³⁰ *See* Doc. Nos. 85; 85-16; 85-43 to 85-48.

³¹ Defendant simultaneously filed a redacted version of the Motion with the motion to seal. (Doc. No. 93.)

1 Court finds that Defendant has narrowly tailored its request to seal to only those portions
 2 of the Motion and Exhibits 3, 10, 16, 21, 26, 50-63, 66, 70-79, 82-86, and 88 that contain
 3 business, financial and technical information that, if disclosed, would place the
 4 designating party at a competitive disadvantage.

5 The Court is not persuaded the information contained in Exhibits 14 and 15
 6 warrants entirely sealing both reports. Exhibit 14 is a copy of the Rebuttal Report of
 7 Professor Ivan Djordjevic, Ph.D.; Exhibit 15 is a copy of the Expert Report of Dr.
 8 Alexander Vardy. Defendant alleges both exhibits contain sensitive information that
 9 ViaSat designated as “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”
 10 This includes discussions of Acacia’s alleged trade secrets, ViaSat’s accused products
 11 and technical information both parties have identified as confidential. However, as
 12 discussed *supra*, this explanation is insufficient to justify sealing each report entirely.
 13 Portions of the exhibits are sealable, but not the entire reports.

14 Therefore, the Court **GRANTS** in part and **DENIES** in part Defendants Motion to
 15 Seal. The Court hereby **ORDERS** the Motion and Exhibits 3, 10, 16, 21, 26, 50-63, 66,
 16 70-79, 82-86, and 88 to the Declaration in support filed under seal.³² The Court further
 17 **DENIES** Defendants request to Seal Exhibits 14 and 15.

18 5. Motion to File Under Seal, 2/13/18 – (Doc. No. 107.)

19 *Reply in Support of Motion for Partial Summary Judgment*

20 Defendant seeks to file under seal portions of its Reply (“Reply”) in Support of
 21 Acacia’s Motion for Summary Judgment Regarding Damages.³³ The Court finds that
 22 Defendant has narrowly tailored its request to seal to only those portions of the Reply that
 23 contain business, financial and technical trade secret information that, if disclosed, would
 24 place the designating party at a competitive disadvantage.

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 27 ³² See Doc. Nos. 91; 91-1 to 91-18; 91-23; 91-27 to 91-59.

28 ³³ Defendant simultaneously filed a redacted version of the Reply with the motion to seal.
 (Doc. No. 109.)

1 The Court **GRANTS** the Defendants Motion to Seal. The Court hereby **ORDERS**
 2 the Reply filed under seal.³⁴

3 6. Motion to File Under Seal, 2/16/18 – (Doc. No. 117.)

4 *Notice of Supplemental Evidence in Support of Motion to Compel*

5 Defendant seeks to file under seal portions of Acacia's (a) Opposition to ViaSat's
 6 Motion to Exclude Expert Testimony; (b) Opposition to ViaSat's Motion for Summary
 7 Judgment on Acacia's Counterclaim for Patent Misappropriation; (c) Opposition to
 8 ViaSat's Motion for Partial Summary Judgment; (d) Reply in Support of Acacia's Motion
 9 for Summary Judgment regarding No Liability (collectively "Memoranda"), and Exhibits
 10 90-94, 96-97, 102-106, 112-138 to Declarations of Stuart V.C. Duncan Smith in
 11 connection with the memoranda.³⁵ The Court finds that Defendant has narrowly tailored
 12 its request to seal to only those portions of the aforementioned memoranda and Exhibits
 13 90-94, 96-97, 102-106, 112-118, and 120-138 that contain business, financial and
 14 technical trade secret information that, if disclosed, would place the designating party at a
 15 competitive disadvantage.

16 The Court does not find Defendant has presented sufficient information to justify
 17 sealing Exhibit 119. Exhibit 119 is a copy of the Expert Report of Dr. Paul R. Pruncal.
 18 Defendant submitted Exhibit 119 in its entirety and seeks to seal it alleging it contains
 19 sensitive information Acacia has designated "HIGHLY CONFIDENTIAL—
 20 ATTORNEYS' EYES ONLY." This includes discussion of Acacia's alleged trade
 21 secrets, ViaSat's accused products and technical information Acacia has identified as
 22 confidential. Again, Defendant has failed to make the necessary showing to justify
 23 sealing Exhibit 119 entirely. Defendant's explanation is generalized with no
 24 "particularized showing" of "specific prejudice or harm." Furthermore, Defendant fails
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 27 ³⁴ See Doc. No. 108.

28 ³⁵ Defendant simultaneously filed redacted versions of the Memoranda with the motion to seal. (Doc. No. 119.)

1 to explain why multiple pages of non-confidential information should be sealed. Without
2 more, the request to seal cannot be granted.

3 Therefore, the Court **GRANTS** in part and **DENIES** in part the Defendants Motion
4 to Seal. The Court hereby **ORDERS** the Memoranda and Exhibits 90-94, 96-97, 102-
5 106, 112-118, and 120-138 to the Declaration in support filed under seal.³⁶ The Court
6 further **DENIES** Defendant's request to seal Exhibit 119.

7 7. Motion to File Under Seal, 3/5/18 – (Doc. No. 146.)

8 *Reply in Support of Motion to Strike and Exclude*

9 Defendant seeks to file under seal portions of its Reply ("Reply") in Support of
10 Acacia's Motion Strike and Exclude Certain Opinions of ViaSat's Experts and Exhibit
11 139 to the Ninth Declaration of Stuart V. C. Duncan Smith in Support of that motion.³⁷
12 The Court finds that Defendant has narrowly tailored its request to seal to only those
13 portions of the Reply and Exhibit 139 that contain business, financial and technical trade
14 secret information that, if disclosed, would place the designating party at a competitive
15 disadvantage.

16 Therefore, the Court **GRANTS** Defendants Motion to Seal. The Court hereby
17 **ORDERS** the Reply and Exhibit 139 to the Declaration in support filed under seal.³⁸

18 8. Motion to File Under Seal, 3/12/18 – (Doc. No. 154.)

19 *Reply in Support of Motion for Summary Judgment*

20 Defendant seeks to file under seal portions of its Reply ("Reply") in Support of
21 their Motion for Summary Judgment that ViaSat Lacks Trade Secret Rights.³⁹ The Court
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24 ³⁶ See Doc. Nos. 118; 118-90 to 118-94; 118-96 to 118-97; 118-102 to 118-106; 118-112
25 to 118-118; 118-120 to 118-138.

26 ³⁷ Defendant simultaneously filed a redacted version of the Reply with the motion to seal.
(Doc. No. 148.)

27 ³⁸ See Doc. No. 147; 147-139.

28 ³⁹ Defendant simultaneously filed a redacted version of the Reply with the motion to seal.
(Doc. No. 156.)

finds that Defendant has narrowly tailored its request to seal portions to only those portions of Reply that contain business, financial and technical information that, if disclosed, would place the designating party at a competitive disadvantage.

Therefore, the Court **GRANTS** Defendants Motion to Seal. The Court hereby **ORDERS** the Reply filed under seal.⁴⁰

III. Conclusion

In sum, the Court finds that a majority of the parties' various motions to seal have been narrowly tailored such that they do not unnecessarily impede upon the public's ability to understand the nature of the proceedings and the factual basis for the parties' claims. As such and in light of the aforementioned compelling reasons justifying sealing, the Court **GRANTS** the motions to seal as described above and as identified by the **following table** in its entirety. Furthermore, any and all documents the Court declined to seal shall be filed in the public record accordingly.

<u>Doc. No.</u>	<u>Movant</u>	<u>Document(s) to be Sealed</u>
73	Acacia	Documents lodged at <u>Docket Number 74</u> as Memorandum of Points and Authorities in Support of Acacia's Motion for Partial Summary Judgment Regarding Damages and exhibit 3, 5-7 and 9-11 to the Declaration of Stuart V. C. Duncan Smith in Support of that motion.
81	Acacia	Documents lodged at <u>Docket Number 82</u> as Memorandum of Points and Authorities in Support of Acacia's Motion for Summary Judgment Regarding No Liability and exhibit 5, 13, 17-23, 27-30, and 33-41 to the Declaration of Stuart V.C. Duncan Smith in support of that motion.
84	Acacia	Documents lodged at <u>Docket Number 85</u> as Memorandum of Points and Authorities in Support of Acacia's Motion to Strike and Exclude Certain Opinions of ViaSat's Experts and exhibit 16, 43-48 to the Third Declaration of Stuart V. C. Duncan Smith in support of that motion.
87	ViaSat	Documents lodged at <u>Docket Number 88</u> as Memorandum of Points and Authorities in Support of ViaSat's Motion for

⁴⁰ See Doc. No. 155.

		Summary Judgment on Acacia's Counterclaim for Patent Misappropriation and exhibit 4 and 5 to the Declaration of Erika H. Warren in support of that motion.
90	Acacia	Documents lodged at <u>Docket Number 91</u> as Memorandum of Points and Authorities in Support of Acacia's Motion for Summary Judgment that ViaSat Lacks Trade Secret Rights and exhibit 3, 10, 16, 21, 26, 50-63, 66, 70-79, 82-86, and 88 to the Fourth Declaration of Stuart V. C. Duncan Smith in support of that motion.
92	ViaSat	Documents lodged at <u>Docket Number 94</u> as Memorandum of Points and Authorities in Support of ViaSat's Motion to Exclude Expert Testimony, exhibits 2-8, 10-17 to the Declaration of Patrick M. Shields in Support of motion, and the Declaration of Dr. Russell Fuerst.
96	ViaSat	Documents lodged at <u>Docket Number 97</u> as Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment and exhibit 1-18, 23, and 27-59 to the Declaration of Kenneth M. Fitzgerald in support of that motion.
101	ViaSat	Documents lodged at <u>Docket Number 102</u> as Opposition to Acacia's Motion for Partial Summary Judgment Regarding Damages and exhibit 1, 5-11, 13-14, 16-30, 32-34, 37-39, and 41-44 to the Declaration of Patrick M. Shields in support of the Opposition.
104	ViaSat	Documents lodged at <u>Docket Number 105</u> as Opposition to Acacia's Motion for Summary Judgment Regarding No Liability and exhibit 5-16 and 21-39 to the Declaration of Kenneth M. Fitzgerald in support of the Opposition.
107	Acacia	Documents lodged at <u>Docket Number 108</u> as Reply in Support of Acacia's Motion for Summary Judgment Regarding Damages.
117	Acacia	Documents lodged at <u>Docket Number 118</u> as Opposition to ViaSat's Motion to Exclude Expert Testimony, Opposition to ViaSat's Motion for Summary Judgment on Acacia's Counterclaim for Patent Misappropriation; Opposition to ViaSat's Motion for Partial Summary Judgment; Reply in Support of its Motion for Summary Judgment Regarding No Liability; and exhibits 90-94, 96-97, 102-106, 112-118, and 120-138 to Declarations of Stuart V. C. Duncan Smith in connection with the four aforementioned memoranda.
123	ViaSat	Documents lodged at <u>Docket Numbers 124 and 125</u> as Corrected Memorandum in Support of ViaSat's Motion for Summary Judgment on Acacia's Counterclaim for Patent Misappropriation;

		Corrected Memorandum of Points and Authorities in Support of ViaSat's Motion to Exclude Expert Testimony; and Exhibits F and G as Ex Parte Applications for Leave to Correct Errors in the aforementioned memorandums.
133	ViaSat	Documents lodged at <u>Docket Number 134</u> as Reply Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment and exhibit 60-63 to the Reply Declaration of Kenneth M. Fitzgerald in support of the motion.
136	ViaSat	Documents lodged at <u>Docket Number 137</u> as Memorandum of Points and Authorities in Support of Opposition to Acacia's Motion to Strike and Exclude Certain Opinions of ViaSat's Experts and exhibit 1-3, and 6 to the Declaration of Matthew S. Warren in support of Opposition.
139	ViaSat	Documents lodged at <u>Docket Number 140</u> as Reply Memorandum of Points and Authorities in Support of ViaSat's Motion to Exclude Expert Testimony and exhibits 18-23 to the Declaration of Patrick M. Shields in support of the motion.
142	ViaSat	Documents lodged at <u>Docket Number 143</u> as Reply Memorandum of Points and Authorities in Support of ViaSat's Motion for Summary Judgment on Acacia's Counterclaim for Patent Misappropriation.
146	Acacia	Documents lodged at <u>Docket Number 147</u> as Reply in Support of its Motion to Strike and Exclude Certain Opinions of ViaSat's Experts and exhibit 139 to the Ninth Declaration of Stuart V. C. Duncan Smith in Support of Reply.
149	ViaSat	Documents lodged at <u>Docket Number 150</u> as Opposition to Acacia's Motion for Summary Judgment that ViaSat Lacks Trade Secret Rights; exhibit 1 to the Declaration of Russel Fuerst In Support of the Opposition; exhibit 1 to the Declaration of Chandrasekar Raj In Support of the Opposition; and exhibits 3-20 to the Declaration of David M. Beckwith In Support of the Opposition.
154	Acacia	Documents lodged at <u>Docket Number 155</u> as Reply in Support of its Motion for Summary Judgment that ViaSat Lacks Trade Secret Rights.
164	ViaSat	Documents lodged at <u>Docket Number 165</u> as Memorandum of Contentions of Fact and Law, and exhibit A to the Memorandum.

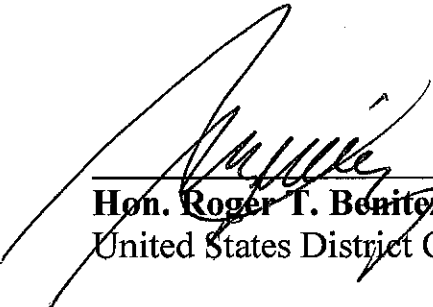
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1 **IT IS SO ORDERED.**

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3 DATED: 6/13, 2018

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5 **Hon. Roger T. Benitez**
6 United States District Court
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